



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2012-0954; FRL-9781-8]

#### **Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Motor Vehicle Emissions Budgets for the Pennsylvania Counties in the Philadelphia-Wilmington, PA-NJ-DE 1997 Fine Particulate Matter Nonattainment Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). This proposed revision consists of an update to the SIP-approved Motor Vehicle Emissions Budgets (MVEBs) for the Pennsylvania counties in the Philadelphia-Wilmington, PA-NJ-DE 1997 fine particulate matter (PM<sub>2.5</sub>) Nonattainment Area (hereafter referred to as the Philadelphia Area) to reflect the use of the most recent version of the Motor Vehicle Emission Simulator model (MOVES). Those counties are: Philadelphia, Montgomery, Delaware, Chester, and Bucks Counties. This rulemaking proposes to approve the MVEBs and thereby make them available for transportation conformity purposes. EPA determined on May 16, 2012 that the Philadelphia Area attained the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS) by the applicable attainment date. Approval of this SIP revision will not interfere with the Philadelphia Area's ability to continue to attain the 1997 PM<sub>2.5</sub> NAAQS. This action is being taken under section 110 of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before [insert date 30 days from date of publication].

**ADDRESSES:** Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2012-0954** by one of the following methods:

- A. [www.regulations.gov](http://www.regulations.gov). Follow the on-line instructions for submitting comments.
- B. E-mail: [fernandez.cristina@epa.gov](mailto:fernandez.cristina@epa.gov)
- C. Mail: EPA-R03-OAR-2012-0954, Cristina Fernandez, Associate Director, Office of Air Program Planning, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.
- D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. **EPA-R03-OAR-2012-0954**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [www.regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact

information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

***Docket:*** All documents in the electronic docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

**FOR FURTHER INFORMATION CONTACT:** Asrah Khadr, (215) 814-2071, or by e-mail at [khadr.asrah@epa.gov](mailto:khadr.asrah@epa.gov).

**SUPPLEMENTARY INFORMATION:** EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained the 1997 PM<sub>2.5</sub> NAAQS by the applicable attainment date, April 5, 2010. On November 6, 2012, the Pennsylvania DEP submitted a draft SIP revision to update the SIP-approved MVEBs for the Philadelphia Area to reflect the use of the most recent version of the MOVES model. On January 29, 2013, Pennsylvania DEP submitted its formal,

final SIP revision to update the SIP-approved MVEBs for the Philadelphia Area.

## **I. Background**

The currently SIP-approved MVEBs for the Philadelphia Area were developed using the Highway Mobile Source Emission Factor Model (MOBILE6.2). On March 2, 2010 (75 FR 9411), EPA published a notice of availability for the MOVES2010 model for use in developing MVEBs for SIPs and for conducting transportation conformity analyses. EPA commenced a two year grace period after which time the MOVES2010 model would have to be used for transportation conformity purposes. The two year grace period was scheduled to end on March 2, 2012. On February 27, 2012 (77 FR 11394), EPA published a final rule extending the grace period for one more year to March 2, 2013 to ensure adequate time for affected parties to have the capacity to use the MOVES model to develop or update the applicable MVEBs in SIPs and to conduct conformity analyses. On September 8, 2010, EPA released MOVES2010a, which is a minor update to MOVES2010 (hereafter referred to as the MOVES model), and which is used by Pennsylvania in this SIP revision.

By requesting that EPA approve its SIP revision to update the SIP-approved MVEBs of the Philadelphia Area to reflect the use of the MOVES model, Pennsylvania DEP is seeking to ensure that the applicable SIP-approved MVEBs are MOVES-based for use in transportation conformity analyses. The transportation conformity rules can be found in 40 CFR 93, Subpart A. One of the requirements for transportation conformity is that any transportation plan, transportation improvement program (TIP) or transportation project not already part of a conforming TIP must conform to the MVEBs in the applicable SIP. In order for the MVEBs in a

SIP to be used to determine conformity of a TIP or a transportation project, the MVEBs must be deemed adequate and/or approved as a SIP revision. The requirements for adequacy are set forth in 40 CFR 93.118(e)(4)(i)-(vi). EPA is proposing to approve the updated MVEBs of the Philadelphia Area as a SIP revision because EPA has thoroughly reviewed the SIP revision and determined that those MVEBs meet the adequacy requirements and have been correctly recalculated to reflect the use of the MOVES model. Upon final SIP approval, the updated MVEBs will become the applicable MVEBs for use in performing transportation conformity analyses.

## **II. Summary of the SIP Revision**

On November 6, 2012, Pennsylvania DEP submitted to EPA a draft SIP revision which updates the Philadelphia Area's MVEBs to reflect the use of the MOVES model. On January 29, 2013, Pennsylvania DEP submitted its formal, final SIP revision to update the Philadelphia Area's MVEBs to reflect the use of the MOVES model. The MVEBs are for PM<sub>2.5</sub> and nitrogen oxides (NO<sub>x</sub>). The attainment demonstration documented that NO<sub>x</sub> is the only significant precursor from on-road sources to the formation of PM<sub>2.5</sub> in the Philadelphia Area. The MVEBs were previously developed using MOBILE6.2 for the year 2009. The previously developed MVEBs for PM<sub>2.5</sub> and NO<sub>x</sub> for the Philadelphia Area were approved as part of EPA's approval of Pennsylvania's 1997 PM<sub>2.5</sub> attainment plan on August 28, 2012 (77 FR 51930). A summary of the updated MOVES-based MVEBs and previously approved MOBILE6.2-based MVEBs for 2009 is provided in Table 1: Summary of MVEBs; the emissions for each pollutant are provided in tons per year (tpy). Also presented in Table 1 is a comparison between the 2002 base year inventory, which was produced by MOBILE6.2 and updated with MOVES, and the 2009

MVEBs. Even though there is an emissions increase in the MOVES-based MVEBs, the increase is not due to an increase in emissions from mobile sources. The increase is due to the fact that the MOVES model provides more accurate emissions estimates than MOBILE6.2 rather than growth that had not been anticipated in the attainment demonstration or changes to any control measures. Even though the MVEBs as calculated using MOVES result in a higher estimate of emissions, the MVEBs are consistent with requirements for attainment in the Philadelphia Area. This is because EPA determined on May 16, 2012 (77 FR 28782) that the Philadelphia Area attained the 1997 PM<sub>2.5</sub> NAAQS by the applicable attainment date and the area continues to attain the 1997 PM<sub>2.5</sub> NAAQS. The design values for the years 2007-2009, 2008-2010, and 2009-2011 respectively are as follows: 13.7 micrograms per cubic meter (µg/m<sup>3</sup>), 13.8 µg/m<sup>3</sup>, and 13.7 µg/m<sup>3</sup>. All of the design values are below the 1997 PM<sub>2.5</sub> NAAQS which is 15 µg/m<sup>3</sup>. Also, preliminary 2012 data show that the Philadelphia Area continues to attain the standard. Therefore, this update to the SIP-approved MVEBs to reflect the use of the MOVES model does not interfere with the Philadelphia Area's ability to continue to be in attainment of the 1997 PM<sub>2.5</sub> NAAQS. A detailed summary of EPA's review and rationale for proposing to approve this SIP revision may be found in the Technical Support Document (TSD) prepared in support of this proposed approval and is available on line at <http://www.regulations.gov>, Docket number **EPA-R03-OAR-2012-0954**.

Table 1: Summary of MVEBs				
Model	MOBILE6.2		MOVES2010a	
Year	2002	2009	2002	2009
PM <sub>2.5</sub> (tpy)	1032.8	699.1	2,904.60	1,907.5
NO <sub>x</sub> (tpy)	63,475.9	36,317.7	90,879.00	57,218.3

### **III. Proposed Action**

EPA is proposing to approve Pennsylvania DEP's SIP revision request from January 29, 2013 to update the SIP-approved MVEBs in the Philadelphia Area to reflect the use of the MOVES model. EPA is proposing approval because this SIP revision will allow the Philadelphia Area to continue to be in attainment of the 1997 PM<sub>2.5</sub> NAAQS, and our in depth review of the SIP revision leads EPA to conclude that the updated MVEBs meet the adequacy requirements set forth in 40 CFR 93.118(e)(4)(i)-(vi), and the updated MVEBs have been correctly calculated to reflect the use of the MOVES model. Upon final approval, these updated MVEBs will be both adequate and SIP-approved for purposes of transportation conformity.

EPA issued conformity regulations to implement the 1997 PM<sub>2.5</sub> NAAQS in July 2004 and May 2005. *See* 69 FR 40004 (July 1, 2004) and 70 FR 24280 (May 6, 2005). Those actions were not part of the final rule recently remanded to EPA by the Court of Appeals for the District of Columbia in *NRDC v. EPA*, No. 08-1250 (January 4, 2013), in which the Court remanded to EPA the implementation rule for the PM<sub>2.5</sub> NAAQS because it concluded that EPA must implement that NAAQS pursuant to the PM-specific implementation provisions of Subpart 4 of Part D of Title I of the CAA, rather than solely under the general provisions of Subpart 1. That decision does not affect EPA's proposed approval of the Philadelphia Area MVEBs. First, as noted above, EPA's conformity rule implementing the 1997 PM<sub>2.5</sub> NAAQS was a separate action from the overall PM<sub>2.5</sub> implementation rule addressed by the Court and was not considered or disturbed by the decision. Therefore, the conformity regulations were not at issue in *NRDC v.*

*EPA*.<sup>1</sup> In addition, the Philadelphia Area is currently attaining the 1997 PM<sub>2.5</sub> NAAQS and EPA has approved Pennsylvania DEP's attainment demonstration for the Philadelphia Area, and the revised MVEBs simply update the budget calculations using MOVES, as explained above. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

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<sup>1</sup> The 2004 rulemaking action addressed most of the transportation conformity requirements that apply in PM<sub>2.5</sub> nonattainment and maintenance areas. The 2005 conformity rule included provisions addressing treatment of PM<sub>2.5</sub> precursors in MVEBs. *See* 40 CFR 93.102(b)(2). While none of these provisions were challenged in the NRDC case, EPA also notes that the court declined to address challenges to EPA's presumptions regarding PM<sub>2.5</sub> precursors in the PM<sub>2.5</sub> implementation rule. *NRDC v. EPA*, slip op. at 18 n. 10.



- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule concerning Pennsylvania's January 29, 2013 request to update the applicable MVEBs of the Philadelphia Area does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Particulate matter.

Authority: 42 U.S.C. 7401 et seq.

Dated: February 7, 2013.

W. C. Early,  
Acting Regional Administrator,  
Region III.

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